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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 374

STATE OF WISCONSIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet. App. A) has not yet been reported.

JURISDICTION

The Court of Claims entered judgment dismissing petitioner's petition in intervention on April 3, 1956. A timely motion for rehearing, amendment of judgment, or new trial was denied on June 5, 1956. The petition for a writ of certiorari was filed on September 1, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether the Court of Claims may dismiss without prejudice a petition to intervene as plaintiff, after determining upon all the evidence that it is not necessary, in order to decide the original plaintiff's claim, that the intervening plaintiff's claim be adjudicated.

STATUTES INVOLVED

The Act of August 30, 1935, 49 Stat. 1049, provides as follows:

> *Be it enacted* * * *, That all claims of whatsoever nature which the Chippewa Tribe or Bands of Indians of Wisconsin may have against the United States, which have not heretofore been determined by the Court of Claims or the Supreme Court of the United States, may be submitted to the Court of Claims with the right of appeal to the Supreme Court of the United States by either party, anything in the Judicial Code of the United States or amendments thereto to the contrary notwithstanding, for determination of the amount, if any, due said Indians from the United States under any treaties, agreements, or laws of the Congress, or for the misappropriation or waste of any of the funds or lands of said Indians or band or bands thereof, or for the failure of the United States to pay said Indians any money or other property due; and jurisdiction is hereby conferred upon the Court of Claims, with the said right of either party to appeal, to hear and determine all legal and

equitable claims, if any, of said Indians against the United States, and to enter judgment thereon.

Section 14(b) and (c) of the Contract Settlement Act of 1944, 58 Stat. 649, 663, 41 U.S.C. 114(b) and (c) contains the following provisions:

> (b) The Court of Claims, on motion of either of the parties, or on its own motion, may summon any and all persons with legal capacity to be sued to appear as a party or parties in any suit or proceeding of any nature whatsoever pending in said court to assert and defend their interests, if any, in such suits or proceedings, within such period of time prior to judgment as the Court of Claims shall prescribe. * * * The Court of Claims may, upon motion of the Attorney General, in any suit or proceeding where there may be any number of persons having possible interests therein, notify such persons to appear to assert and defend such interests. * * * Upon appearance by any person pursuant to any such summons or notice, the case as to such person shall, for all purposes, be treated as if an independent proceeding had been instituted by such person pursuant to section 145 of the Judicial Code, as amended, and as if such independent proceeding had then been consolidated, for purposes of trial and determination, with the case in respect of which the summons or notice was issued, * * * and the Court of Claims shall have jurisdiction to adjudicate, as between any and all adverse claimants, their respective several interests in any matter in suit and to award several judgments in accordance therewith.

(c) The jurisdiction of the Court of Claims shall not be affected by this Act except to the extent necessary to give effect to this Act, and no person shall recover judgment on any claim, or on any interest in any claim, in said court which such person would not have had a right to assert in said court if this section had not been enacted.

STATEMENT

The Act of August 30, 1935, 49 Stat. 1049, authorized Chippewa Bands of Wisconsin to submit all claims of any nature which the Chippewas might have against the United States to the Court of Claims for determination. Thereunder the Lac Du Flambeau, Lac Court O'Reilles, and Bad River Bands of the Lake Superior Chippewa Indians of Wisconsin (hereafter called the Indians) filed a petition in the Court of Claims asking damages for the value of swamp land in their reservations and the value of the timber thereon. The State of Wisconsin claims these lands under the Act of September 28, 1850, 9 Stat. 519 (commonly referred to as the Swamp Lands Act), which granted to the various states "unsold lands" of the United States lying within their boundaries which were swamp lands. Reservations including the alleged swamp lands were established for the Indians pursuant to the Act of December 19, 1854, 10 Stat. 598, and the Treaty of 1854, 10 Stat. 1109.

The history of the Wisconsin claim, the various positions taken and actions of Wisconsin, the Indians, and the United States are set out in great detail in the findings of fact by the Court of Claims (Pet. App. A, pp. 7-153). It is unnecessary to consider them for purposes of disposing of the questions raised by the petition.

The Court of Claims, in view of the conflicting interests in the swamp lands, notified the State of Wisconsin, in 1948 of the pendency of the suit and gave the State 90 days within which to intervene should it desire to do so. Wisconsin filed a petition to intervene in February 1949 asking that the Court of Claims decree Wisconsin to have the fee simple title to all swamp lands in the Indians' reservations, and further asking to recover the proceeds of sale of timber cut from said lands and allegedly held in escrow. The request to quiet title was later abandoned, Wisconsin acknowledging that the Court of Claims did not have jurisdiction. 114 C.Cls. 71, 74, 75. Wisconsin reserved in its petition to intervene a right to challenge the jurisdiction of the Court of Claims over the "subject matter of the suit and the 'person' of intervenor." The Court of Claims accorded Wisconsin the status of a party in the case. 114 C.Cls. 71.

In its final opinion the Court of Claims stated that it would not consider Wisconsin's petition or its prayer for relief "unless it is necessary to do so in order to decide the issues between the plaintiffs and the United States. * * *" The court decided this was not necessary. It said (Pet. App. A, p. 6):

> When the United States granted the reservations to the Indians in 1854, it became obligated to them to secure to them the enjoyment of the lands and of the proceeds of the lands. This was so, whether or not the United States then had good title to the lands which it purported to grant. If the title had failed and the Indians had lost the possession of the lands, the United States would have been liable to compensate them for their loss. If one with a

better title had taken the timber from the lands, the United States would have had to compensate them for the timber. *Whether or not the State of Wisconsin ever has owned or does now own the swamp lands in the reservations is immaterial to the question of the obligation of the United States to the Indians, under the Treaty of 1854.* [Italics supplied.]

ARGUMENT

Petitioner here raises the narrow question of whether the court below acted properly in dismissing its intervention without passing upon its jurisdiction to determine petitioner's claim. Petitioner does not urge that the court below had, or did not have, jurisdiction, but only that the court should have decided whether it had power to adjudicate the claim. (Pet. 14-15.)

If the claim of the Indians for damages did not depend upon title, the claims of the State of Wisconsin, based upon title, to funds derived from the sale of timber from the Indians' reservations are, as the Court of Claims decided, completely extraneous to the matter the court determined. The Court of Claims could entertain the Indians' suit by virtue of a special jurisdictional statute which gave them authority only to hear and determine claims *of the Indians* against the United States. The issue decided was the extent to which the Indians had been deprived of the complete use of and income from the lands which the United States set aside for the Indians' reservations in 1854, not whether the State of Wisconsin had a money claim against the United States arising from the Swamp Lands Act, 9 Stat. 519. It is fundamental that Wisconsin, as an intervenor, was limited by the issues which the Indians were authorized to present to the Court of Claims. It

could not introduce new issues or change the character of the suit. *Columbia Gas Co.* v. *American Fuel Co.*, 322 U. S. 379, 383; *Vinson* v. *Washington Gas Co.*, 321 U. S. 489, 498; *Chandler Co.* v. *Brandtjen, Inc.*, 296 U. S. 53, 57-58.

Since the Court of Claims could settle the questions presented by the Indians without deciding whether it had jurisdiction over any part of Wisconsin's claim as intervenor, it was not error for the court to refrain from saying whether it did have such jurisdiction or not. *Public Service Comm. of Utah, et al.* v. *Wycoff Co., Inc.*, 344 U. S. 237, 248-249; *Brooks* v. *Dewar*, 313 U. S. 354, 359-360.

The argument presented by the petitioner, that it had a valid claim in 1949, when the petition to intervene was filed, which is now barred by the statute of limitations, is erroneous. Generally a right accrues when it comes into existence or arises, without regard to the date of the passage of any legislation which may affect the prosecution of such right. *United States* v. *Lindsay*, 346 U. S. 568, 569. Wisconsin's cause of action accrued for purposes of the Court of Claims limitation of actions when it was first entitled to bring suit in its own right. Wisconsin could not have intervened unless the court had jurisdiction of its claim independently. Section 14(c), Contract Settlement Act of 1944, 58 Stat. 649, 664. An independent cause of action must have accrued, if ever, decades before the petition to intervene was filed in 1949. Certainly, it was no later than when the Commissioner of the General Land Office finally rejected Wisconsin's claim to the swamp lands in 1918 and 1919 and Wisconsin was notified of this action (Pet. App. A, finding 85(h), p. 92; finding 88(d), (e),

p. 97; finding 88(i), p. 99; see also findings 133, 134, 135, pp. 142-143).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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